

REMARKS

Claims 109-189 are pending in the application. Claims 109 and 148 are the only independent claims.

Claims Rejections - Double Patenting

Claims 109-189 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-36 of U.S. Patent No. 6,387,119. The Examiner contends that the claims of the prior patent represent a species of the generic invention of the present application.

Applicants respectfully traverse the rejection of the claims under the judicially created doctrine of obviousness type double patenting.

The claims of U.S. Patent No. 6,387,119 (“the ‘119 patent”) do not represent a species of the present claimed invention, because the claims of the ‘119 patent do not contain all of the elements of the independent claims 109 and 148 of the present application. Claim 109 recites “creating a channel extending at least partially in a heart wall” and claim 148 recites “advancing a needle through a heart wall and into a portion of the coronary vessel ...,” while the claims of the ‘119 patent say nothing about a heart wall. Thus, the invention of the ‘119 patent is not a species of the presently claimed invention.

The present claims are not obvious in view of claims 1-36 of the ‘119 patent for essentially the same reason. It would not be obvious from the claims of the ‘119 patent to create “a channel extending at least partially in a heart wall” (applicants’ claim 109) or to advance “a needle through a heart wall and into a portion of the coronary vessel” (claim 148).

Claims Rejections - 35 U.S.C. §§ 102 and 103

Claims 109-189 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,830,222 to Makower.

Claims 109-189 also stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,976,178 to Goldstein.

Applicants respectfully traverse the rejection of the claims under 35 U.S.C. § 102(e). Neither of the references relied on by the Examiner either teaches or suggests a coronary artery bypass technique that includes creating a passageway at least partially through the heart wall of the patient.

More specifically, with respect to applicants' independent claim 109, neither of the references relied on by the Examiner either teaches or suggests "creating a channel extending at least partially in a heart wall." With respect to applicants' claim 148, neither Makower nor Goldstein discloses or suggest "advancing a needle through a heart wall and into a portion of the coronary vessel"

The Examiner refers in part to Figure 4 of Makower. That figure shows the extension of a conduit from a coronary artery (2) to a coronary vein (3) through an "interstitial space." The interstitial space is not labeled in Figure 4 but is labeled and discussed with reference to Makower Figure 12(A). Clearly, an "interstitial space" is not a heart wall. Figure 19B of the Makower reference shows a tunnel (190) extending from a coronary artery, at a point upstream of a blockage, "through surrounding tissue" back to the coronary artery at a point downstream of the blockage. The specification says "through surrounding tissue" not "through the myocardium" or "through the heart wall." To interpret the phrase "through surrounding tissue" to mean "through the heart wall" is

an interpretation of Makower Figure 19B based on hindsight provided by applicants' disclosure.

Goldstein discloses a bypass procedure in which a tubular shunt is placed around a blockage, the shunt being delivered through the affected or afflicted artery. Goldstein says nothing whatsoever about placing the tubular shunt at least partially through a heart wall of the patient, as set forth in applicants' claims 109 and 148.

The present Amendment is submitted with a Revocation and Appointment of Substitute Counsel appointing the undersigned to represent the assignee of the application

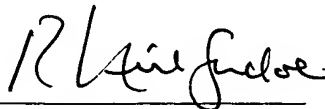
Conclusion

For the foregoing reasons, independent claims 109 and 148, as well as the claims dependent therefrom, are deemed to be in condition for allowance. An early Notice to that effect is earnestly solicited.

Should the Examiner believe that direct contact with applicant's attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number below.

Respectfully submitted,

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